

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-286-E - ORDER NO. 92-481 ✓
JUNE 26, 1992

IN RE: Broad River Electric Cooperative, Inc.,)	
)	
Complainant/Petitioner,)	
)	ORDER DENYING
vs.)	PETITION FOR
)	REHEARING AND
Board of Public Works, City of)	RECONSIDERATION
Gaffney,)	
)	
Defendant/Respondent.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and Reconsideration filed on behalf of Broad River Electric Cooperative, Inc. (Broad River) in the above referenced matter. Broad River seeks rehearing and reconsideration of Commission Order No. 92-335, issued May 27, 1992, in the instant Docket. Thereafter, a Return was filed on behalf of the Board of Public Works, City of Gaffney (the City).

The Commission has considered the Petition for Rehearing and Reconsideration, the Return, and has reviewed the Order in dispute. Based on the Commission's determinations as follows, the Commission finds and concludes that Order No. 92-335 should not be modified, amended, reheard or reconsidered, and that the Petition for

Rehearing and Reconsideration filed by Broad River should be denied.

Broad River sets out seven allegations of error on behalf of the Commission in its Order No. 92-335:

A. Conflict with Duke v. City of Gaffney

Paragraphs 3(A), (F), and (G) of Broad River's Petition deal with the alleged conflict between the Commission's decision in Order No. 92-335 and the South Carolina Supreme Court's decision in the case of Duke Power Company v. The South Carolina Public Service Commission, 300 S.C. 210, 387 S.E.2d 241 (1989). The Commission disagrees with Broad River's broad interpretation of the Supreme Court decision and its interpretation of Order No. 92-335.

First, it appears that Broad River would interpret the Duke case as being retroactive in nature. According to Broad River's interpretation, the fact that the City was serving in another section in the unassigned area pursuant to a Commission order, Order No. 85-61, issued in 1985, the Duke decision issued in 1989 would require in all cases, a two prong test to be used in every extension of service pursuant to S.C. Code Ann. §58-27-1230(C). The City was currently serving in the area pursuant to a valid Commission Order (Order No. 85-61) and the Court's subsequent interpretation of §58-27-1230(C) does not affect the City's existing provision of service in that area.

It is the Commission's position that Broad River appears to extend the very narrow holding in Duke to require the satisfaction of the conditions of §58-27-1230(C) in every circumstance dealing with the extension of an electric system in areas outside municipal limits, whether that section be applicable or not. Such a position, in the Commission's opinion, is untenable. Broad River's argument ignores the separate express exemptions from certification requirements set forth in §58-27-1210, which the Commission relied upon in Order No. 92-335. Broad River's interpretation would seem to reject the applicability of any other statutory exemption from the certification requirement set forth in §58-27-1230. The Commission is of the opinion that Broad River's interpretation of the Duke decision and §58-27-1230 are erroneous. The Commission found in Order No. 92-335, that §58-27-1210 is the controlling statute in this matter. The Commission has looked at the statutory scheme for extension of service and finds that to ignore §58-27-1210 would render the statutory scheme meaningless and place an unreasonable burden in certain circumstances on the entity extending its line to serve a requesting customer located in close proximity to the existing lines of the utility/cooperative/consolidated political subdivision.

B. Error as a Matter of Law

Broad River alleges in Paragraph 3(B) that the Commission "erred in finding as a matter of law that §58-27-1210 applied to the exclusion of §58-27-1230." This bare assertion, without elaboration or explanation fails to comply with the requirements

that a request for rehearing or reconsideration set forth specifically and clearly the errors which a party complains. See, S.C. Code Ann. §58-27-2150 (1976) and 26 S.C. Code Regs. 103-836(A)(4)(1976).

In any event, there was no error in the Commission's application of §58-27-1210. Indeed, §58-27-1230 recognizes that an electric utility may be ordered by the Commission pursuant to §58-27-1210 to extend service to a customer without first obtaining a certificate. Pee Dee Elec. Coop. v. South Carolina Pub. Serv. Comm'n, 229 S.C. 155, 92 S.E. 2d 171 (1956).

The record contains numerous reasons supporting the Commission's exercise of its discretion and its application of the provisions of §58-27-1210. The evidence demonstrates that the City responded to a request for service by the customer at issue by an extension of less than 300 feet from its existing lines. TR. pp. 60-61. The necessary three phase service was readily available from the City (Id.), although Broad River would have been required to upgrade its single phase service by constructing an additional primary conductor for a distance of 2,000 feet to enable it to serve the customer in question. TR. pp. 37-38. Furthermore, the Employment Security Commission, which requested the service, was located on property adjacent to an existing customer of the City and in an area in which the City was already providing its electric service. TR. pp. 57-60. Finally, the City was obligated to provide the requested service because of the proximity of the customer to the City's existing line. S.C. Code Ann. §58-27-1210

(1976). Under the facts before the Commission, the Commission properly determined that the imposition of a requirement for a certificate for the City's extension would "thwart the intent of the law, as well as place an unreasonable burden on the municipality." Order No. 92-335, p.9.

C. Conflict with Sections 58-27-1010 and 5-31-1910

Broad River alleges in Paragraph 3(C) that the Commission's finding that Gaffney is "obligated to provide service within 300 feet of its line" is in direct conflict with S.C. Code Ann. §58-27-1010 and §5-31-1910 (1976) and the judicial precedence applicable thereto. The Commission disagrees. First, the Commission is of the opinion that Broad River has no standing to raise the issue of whether or not the Commission's decision conflicts with the City of Gaffney's right to contract with its customers for electric service. If the Commission has infringed upon the City's right to contract, the City should bring this matter to the Commission's attention, not Broad River who is not a party to the contract nor aggrieved by the alleged infringement. In any event, the authorities upon which Broad River relies, are inapplicable. Nothing in Order No. 92-335 constitutes regulation of the City's contract with the customer at issue. The Commission's application of §58-27-1210 neither regulated nor disturbed the service agreement entered into between the City and the customer. Therefore, Broad River's allegation is without foundation.

D. Whether the Commission Complied With
the Terms of Section 58-27-1210

According to the Petition for Rehearing and Reconsideration filed by Broad River, the Commission erred in "concluding that a hearing had been held under said Statute under which the Commission had concluded that the terms and conditions of the extension by the City was just and reasonable." §58-27-1210 authorizes the Commission to order, after hearing, "any electrical utility, distribution electric cooperative, or consolidated political subdivision...to establish, construct, maintain, and operate any reasonable extension of its existing facilities." Section 58-27-1210 goes on to allow that the Commission may on a complaint and after hearing prescribe such terms and conditions with respect to an extension "as may be just and reasonable" if the extension will interfere with the service or system of another electrical utility, distribution electric cooperative, or consolidated political subdivision. Therefore, it is the Commission's interpretation that the Commission is not required to prescribe the terms and conditions of the extension by the City except when there is the potential for interference with the service or system of another electrical utility or electric supplier. Such was not the case before the Commission and therefore, the hearing held by the Commission in this matter satisfies the conditions of §58-27-1210. Again, Broad River differs with the Commission's interpretation of §58-27-1210. However, the Commission is of the opinion that its interpretation is correct.

E. Effect of Corridor Rights

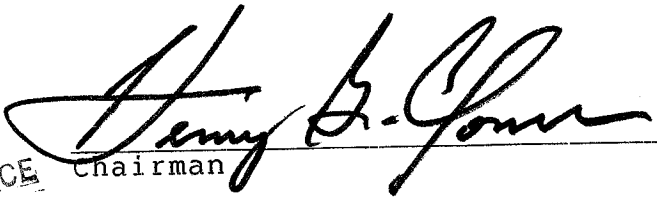
Broad River alleges that the Commission erred in interpreting the effect of corridor rights upon the City's extension. Broad River asserts that its right to serve the Employment Security Commission is relevant to the public's need for Gaffney's line extension and not to the exclusive nature of Broad River's right to serve. However, in light of the Commission's determination that §58-27-1230 does not apply to this extension and that §58-27-1210 does, the "public need" is not relevant to the City's extension. Additionally, the existence of corridor rights would not create the requirement that the City first secure a certificate nor would it create an exclusive right of Broad River to provide its service. Therefore, Broad River's argument must fail.

CONCLUSION

The Commission, having fully responded to all allegations of error alleged in the Petition for Rehearing and Reconsideration filed on behalf of Broad River Electric Cooperative, Inc. hereby denies the Petition for Rehearing and Reconsideration of Order No. 92-335 and denies the request for oral argument in this proceeding.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


VICE Chairman

ATTEST:


Deputy Executive Director
(SEAL)